



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Introduce Ordinance Amending Lodi Municipal Code Title **15**, Chapter **15.64**, "Development Impact Mitigation Fees" as it Relates to the timing of the Collection of Fees During the Period of July 1, 2010 through June 30, 2013

**MEETING DATE:** June 2, 2010

**PREPARED BY:** Community Development Director

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**RECOMMENDED ACTION:** Introduce ordinance amending Lodi Municipal Code Title 15, Chapter **15.64**, "Development Impact Mitigation Fees" as it relates to the timing of the collection of fees during the period of July 1, 2010 through June 30, 2013

**BACKGROUND INFORMATION:** As the City Council may recall, direction was given at a previous Council meeting to amend the Ordinance relating to the collection of Impact Mitigation Fees. The direction provided that fees be collected at time of occupancy rather than permit issuance and that the provision have a sunset after three years. The draft ordinance presented amends the Municipal Code in order to implement the Council direction.

The City charges impact fees on new development activities. This program has been in place since early 1992. The fees are charged to cover **costs** for municipal activities such as water, sewer, parks, and streets. The City collects these fees at the time of permit issuance. This has been the typical time for collection of these fees, as well as others, including building permit and outside agency fees. We are not changing the collection timing of impact fees for outside agencies. The minutes from the previous meeting are attached for Council review.

**FISCAL IMPACT:** Not Applicable

**FUNDING AVAILABLE:** Not Applicable

A blue ink signature of Konradt Bartlam, consisting of several loops and a long horizontal stroke.

Konradt Bartlam  
Community Development Director

KB/kjc

Attachments:  
Draft Ordinance  
Minutes

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APPROVED:

A blue ink signature of Konradt Bartlam, consisting of several loops and a long horizontal stroke.

Konradt Bartlam, Interim City Manager

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI  
AMENDING LODI MUNICIPAL CODE TITLE 15 – BUILDINGS AND  
CONSTRUCTION – CHAPTER 15.64, “DEVELOPMENT IMPACT  
MITIGATION FEES,” BY REPEALING AND REENACTING SECTION  
15.64.040 RELATING TO THE TIMING OF THE COLLECTION OF IMPACT  
FEES DURING THE PERIOD JULY 1, 2010 THROUGH JUNE 30, 2013

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Title 15, “Buildings and Construction” Chapter 15.64 is hereby amended by repealing and reenacting Section 15.64.040 and shall read as follows:

15.64.040 Payment of Fees [Inoperative July 1, 2010 – June 30, 2013].

A. The property owner of any development project causing impacts to public facilities shall pay the appropriate development mitigation fee as provided in this chapter. The amount shall be calculated in accordance with this chapter and the program fee as established by council resolution.

B. When such payment is required by this chapter, no building permit or site development permit shall be approved for property within the city unless the development impact mitigation fees for that property are paid or guaranteed as provided in this chapter.

C. The fees shall be paid with the approval of a final subdivision map, building permit or site development permit, whichever occurs first except as provided in subsection (E) or (F) of this section.

D. If a final subdivision map has been issued before the effective date of the ordinance codified in this chapter, then the fees shall be paid before the issuance of a building permit or grading permit, whichever comes first except as exempted under Section 15.64.110 of this chapter.

E. Where the development project includes the installation of public improvements, the payment of fees established by this chapter may be deferred and shall be collected prior to acceptance of the public improvements by the city council. Payment of all deferred fees shall be guaranteed by the owner prior to deferral. Such guarantee shall consist of a surety bond, instrument of credit, cash, or other guarantee approved by the city attorney.

F. The fees may not be prepaid unless specified otherwise in a fee payment agreement or development agreement approved by the city council.

G. Notwithstanding the above, the city may collect subsequent increases in impact fees or new impact fees, unless the development project is exempt from fee increases under the terms of a fee payment agreement approved by council, a development agreement approved by council or California law.

**H. This Section 15.64.040 shall become inoperative as of July 1, 2010 and shall remain inoperative through June 30, 2013, unless prior to July 1, 2013, the Lodi City Council enacts an ordinance deleting or extending the dates of inoperability or repealing this Section 15.64.040 in its entirety.**

15.64.040 Payment of Fees [Effective July 1, 2010 through June 30, 2013].

- A. The property owner of any development project causing impacts to public facilities shall pay the appropriate development mitigation fee as provided in this chapter. The amount shall be calculated in accordance with this chapter and the program fee as established by Council resolution.
- B. When such payment is required by this Chapter, no Certificate of Occupancy or site development permit shall be approved for property within the City unless the development impact mitigation fees for that property are paid or guaranteed as provided in this chapter.
- C. The fees shall be paid with the approval of a Certificate of Occupancy or Site Development Permit, except as provided in subsection (E) or (F) of this section.
- D. Where the development project includes the installation of public improvements, the payment of fees established by this Chapter may be deferred and shall be collected prior to acceptance of the public improvements by the City Council. Payment of all deferred fees shall be guaranteed by the owner prior to deferral. Such guarantee shall consist of a surety bond, instrument of credit, cash, or other guarantee approved by the City Attorney.
- E. The fees may not be prepaid unless specified otherwise in a fee payment agreement or development agreement approved by the City Council.
- F. Notwithstanding the above, City may collect subsequent increases in impact fees or new impact fees, unless the development project is exempt from fee increases under the terms of a Fee Payment Agreement approved by Council, a Development Agreement approved by Council or California law.
- G. This Section 15.64.040 shall become operative as of July 1, 2010 and shall remain in effect until June 30, 2013, at which date it shall be repealed in its entirety, unless otherwise extended by an enacted ordinance of the Lodi City Council.**

Section 2. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 4. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect 30 days from and after its passage and approval.

Attest:

Approved this \_\_\_\_ day of \_\_\_\_\_, 2010.

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Randi Johl  
City Clerk

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Phil Katzakian  
Mayor

State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held May 19, 2010, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_ was approved and signed by the Mayor of the date of its passage and the same has been published pursuant to law.

Randi Johl  
City Clerk

Approved as to Form:  
D. STEPHEN SCHWABAUER  
City Attorney

By \_\_\_\_\_  
Janice D. Magdich  
Deputy City Attorney

# Minutes from Previous Council Discussion

Item J-3 – Discussion  
Regarding the Timing of the  
collections of Impact Fees

In response to Council Member Hansen, Mr. Sandelin stated the estimated cost to replace the sidewalk is \$4,000. Mrs. Hughes stated neighbors are not objecting and she would like to purchase the property if she can afford it. She also stated that people continue to park along the street even though it is prohibited and signage is in place.

In response to Mayor Pro Tempore Hitchcock, Mr. Schwabauer stated selling a right of way for improvements does not traditionally require appraisals. Mr. King stated the City will make an attempt to obtain the estimated value and have the property owner make up the difference. Further, Mr. Schwabauer stated the value will be what the property is worth on the market. He stated factors considered in determining the value include temporary easement costs, construction and nuisance payments, and other related costs.

Council Member Hansen made a motion, second by Council Member Mounce, to direct staff to pursue an option to exchange the right of way for ramp improvements at Turner Road and obtain the necessary appraisal.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Mounce, and Mayor Katzakian

Noes: Mayor Pro Tempore Hitchcock

Absent: None

J-3 Discussion Regarding the Timing of the Collection of Impact Fees (CD)

Interim Community Development Director Rad Bartlam provided a brief presentation regarding the current timing of the impact fees. Mr. Bartlam specifically discussed the various impact fees charged for new development, current program establishment in 1992 as a result of the current General Plan, fees covering capital costs for new development, fees currently collected at building permit issuance, suggestion that fees be deferred until certificate of occupancy, no change in dollar amount per se, change for time of collection, and fair argument for both sides of when actual impact occurs.

In response to Council Member Johnson, Mr. Bartlam stated the worst case scenario would be a family who is building a dream home and cannot move into the home because the relevant person administering the certificate of occupancy and charged with collecting the impact fees is not available. Mr. Bartlam stated the certificate of occupancy does not have anything to do with if the builder moves in, but rather that the structure is ready to occupy. He stated the concern is less with a professional developer versus an individual builder.

In response to Mayor Pro Tempore Hitchcock, Mr. Bartlam stated he has not seen many incidents specific to this issue but it is not uncommon to find that during the final inspection people are ready to move in but fees cannot be collected and some people move in without the certificate of occupancy. Further, Mr. Bartlam stated there really is not another trigger point in the middle of the process for residential developments where the fees can be collected.

In response to Council Member Hansen, Mr. Bartlam stated Council could modify the timing now, place a sunset on the timing, and change it back later when conditions improve.

John Beckman, representing the Building Industry Association, provided an overview of the current status of development, considerations of fee reductions and fee deferrals in other communities, and discussed the city of Manteca where fee reductions are being considered.

Council Member Mounce made a motion, second by Council Member Johnson, to direct staff to prepare an ordinance, with a sunset clause of three years, allowing for impact fees to be collected at the time the certificate of occupancy is issued.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: None

J-4 Authorize City Manager to Execute Addendum to the 2008-2009 Memorandum of Understanding Between the City of Lodi and the Lodi City Mid-Management Association (CM)

City Manager King briefly summarized the addendum to the Memorandum of Understanding specifically discussing the one-year term, reopener if there is an across the board increase, opt-out language on medical similar to other groups, and tuition reimbursement.

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Mounce, to authorize the City Manager to execute addendum to the 2008-2009 Memorandum of Understanding between the City of Lodi and the Lodi City Mid-Management Association.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Noes: None

Absent: None

J-5 Set Public Hearing for February 3, 2010, to Extend Interim Ordinance No. 1823, an Uncodified Interim Urgency Ordinance Imposing a Temporary Moratorium on the Establishment or Operation of Medical Marijuana Dispensaries in the City of Lodi (CA)

Deputy City Attorney Magdich provided an overview of the status of the current moratorium on the establishment or operation of medical marijuana dispensaries.

In response to Council Member Hansen, Ms. Magdich stated the petition on the subject matter, which has yet to qualify, pertains to recreational use and not medical use of marijuana.

In response to Mayor Pro Tempore Hitchcock, Ms. Magdich stated the current temporary moratorium ends in April 2010 and the City can extend the moratorium for one additional year.

Robin Rushing spoke in favor of allowing medical marijuana dispensaries in the City to treat a variety of illnesses and bring revenue. In response to Council Member Johnson, Mr. Rushing stated illnesses could include cancer, diabetes, foot pain, arthritis, and anxiety among others.

Mayor Pro Tempore Hitchcock made a motion, second by Council Member Mounce, to set public hearing for February 3, 2010, to extend interim Ordinance No. 1823, an uncodified interim urgency ordinance imposing a temporary moratorium on the establishment or operation of medical marijuana dispensaries in the City of Lodi.

VOTE:

The above motion carried by the following vote: